

S.N. 10/828,532

Art Unit: 3749

## REMARKS

Claims 31-36 are rejected under the first paragraph of 35 USC 112. The Examiner states that the claimed peripheral wall of the calcination zone "being substantially free of ceramic along part of said calcination zone" is deemed to be new matter and that the applicant nowhere describes the improvement or utility of free of ceramic material in the peripheral wall of the calcination zone.

The applicant respectfully points out that the last paragraph of MPEP 2173.05(i) explicitly states that a lack of a literal basis in the specification for a negative limitation may not be sufficient to establish a prima facie case for lack of descriptive support. Since column 6, lines 19-27 of the applicant's original U.S. Patent No. 5,975,892 clearly specifies that the calcining reactor is a component from which refractory insulation may be eliminated, the language "being substantially free of ceramic along part of said calcination zone" is supported by the specification. The improvement or utility of free of ceramic material in the peripheral wall of the calcination zone is at least partly a cost reduction as is implicit from column 6, lines 12-13 of the applicant's original U.S. Patent No. 5,975,892.

S.N. 10/828,532

Art Unit: 3749

In light of the above, it is respectfully submitted that the rejection of claims 31-36 under the first paragraph of 35 USC 112 should be withdrawn.

Claims 31-36 stand further rejected under the second paragraph of 35 USC 112. The Examiner states that the claimed limitation "being substantially free of ceramic along part of said calcination zone" renders the claims indefinite because it is an attempt to claim the invention by excluding what the inventor did not invent rather than distinctly and particularly pointing out what the inventor did invent. The Examiner here cites In re Schechter, 205 F.2d 185, 98 USPQ 144 (CCPA 1953). The Examiner additionally states that the specification fails to explain what materials other than ceramic may be used and that the applicant nowhere describes the improvement or utility of free of ceramic material in the peripheral wall of the calcination zone.

The applicant respectfully draws the Examiner's attention to the fact that In re Schechter is directed to the language "R is an alkenyl radical other than (emphasis by the applicant) 2-butenyl and 2,4-pentadienyl". In contrast, the second paragraph of MPEP 2173.05(i) notes that the language "said homopolymer being free from (emphasis by the applicant) the proteins, soaps, resins, and

S.N. 10/828,532

Art Unit: 3749

sugars present in natural Hevea rubber" was considered definite. This is the same language used in the applicant's claims.

Regarding the Examiner's statement that the specification fails to explain what materials other than ceramic may be used, the applicant respectfully points out that the ceramic is not being replaced by another material. Rather, as indicated in column 6, lines 24-25 of the applicant's original U.S. Patent No. 5,975,892, the ceramic functioning as insulation is simply eliminated from the basic support structure which is then no longer insulated.

The Examiner's remark that the applicant nowhere describes the improvement or utility of free of ceramic material in the peripheral wall of the calcination zone has been addressed earlier.

In view of the foregoing, it is respectfully requested that the rejection of claims 31-36 under the second paragraph of 35 USC 112 be withdrawn.

The Examiner additionally rejects claims 31-36 under 35 USC 102(e) as anticipated by or, in the alternative, under 35 USC 103(a) as obvious over U.S. Patent No. 5,713,734 to Makris. The Examiner states that Makris discloses a calcination plant including a calcination zone 4 and means 2 for transporting particulate

S.N. 10/828,532

Art Unit: 3749

material through at least part of the calcination zone along a substantially cyclonic path. The Examiner goes on to say that the peripheral wall of the calcination zone of Makris is free of ceramic because Makris does not expressly state that ceramic is used. Alternatively, the Examiner holds that it is obvious to reduce the use of ceramic along the peripheral wall of the calcination zone in order to increase heat conduction during heating.

Considering the Examiner's statement that the peripheral wall of Makris is free of ceramic because Makris does not expressly disclose that ceramic is employed, the applicant respectfully notes that it is a well-established policy of the Patent and Trademark Office not to require disclosure of that which is standard in the art. Since ceramic in a calcination zone is standard practice, the failure of Makris to disclose ceramic actually constitutes a teaching that ceramic is used. Hence, claims 31-36 are not anticipated by Makris.

With respect to the Examiner's statement that it is obvious to reduce the use of ceramic, the applicant respectfully points out that ceramic is employed in a calcination zone to insulate the basic structure against intense heat capable of weakening or damaging the basic structure. The applicant has recognized that

S.N. 10/828,532

Art Unit: 3749

cyclonic flow in a calcination zone causes the material being calcined to form a protective layer which can substitute for ceramic. Makris fails to recognize this concept and, therefore, one of ordinary skill in the art faced with the Makris disclosure would not eliminate ceramic from a calcination zone for fear of damaging the structure of the zone. Accordingly, claims 31-36 are not obvious from Makris.

Claims 31-36 are also rejected under 35 USC 102(b) as anticipated by or, in the alternative, under 35 USC 103(a) as obvious over U.S. Patent No. 3,881,862 to Nishida. The Examiner states that Nishida discloses a calcination plant including a calcination zone 4 and means 2A-2D for transporting particulate material through at least part of the calcination zone along a substantially cyclonic path. The Examiner further states that the peripheral wall of the calcination zone of Nishida is free of ceramic because Nishida does not expressly disclose that ceramic is used. Alternatively, the Examiner considers it to be an obvious matter to reduce the use of ceramic along the peripheral wall of the calcination zone in order to increase heat conduction during heating.

The applicant believes that claims 31-36 are not anticipated by or obvious from Nishida for the reasons outlined above with respect to Makris.

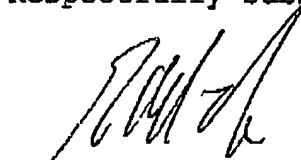
S.N. 10/828,532

Art Unit: 3749

An early Action in view of the foregoing is respectfully solicited.

Please charge any cost associated with this response to our Deposit  
Account No. 17-0055.

Respectfully submitted,



Gavin Milczarek-Desai  
Reg. No. 45,801

(520) 770-8716 telephone  
(520) 623-2418 fax